



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: JUNE 29, 2023

IN THE MATTER OF:

Appeal Board No. 629071

PRESENT: MICHAEL T. GREASON, MEMBER

In Appeal Board Nos. 629069, 629070, 629071, the claimant appeals from the combined decision of the Administrative Law Judge filed April 13, 2023, insofar as the combined decision sustained the initial determinations, disqualifying the claimant from receiving benefits, effective October 16, 2021, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of \$3,528.00 in benefits recoverable pursuant to Labor Law § 597 (4); and reducing the

claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$529.20 on the basis that the claimant made a willful misrepresentation to obtain benefits.

At the combined telephone conference hearings before the Administrative Law Judge, testimony was taken. There were appearances on behalf of the claimant and the employer.

Our review of the record reveals that the case should be remanded to hold a further hearing to assess the credibility of the parties regarding the reasons for the separation.

At the further hearing, the parties will offer further testimony and evidence regarding the claimant's request for additional money to travel to the job site in Penn Yan. In furtherance of such testimony, the parties will describe the claimant's work schedule, his weekly rate of pay, how often he was paid, the method of payment, and employee benefits, if any, included within his paycheck, including travel expenses, health insurance, etc.

The parties will explain how they agreed upon \$50.00 per day as sufficient compensation for travel to and from the Penn Yan worksite; whether the claimant had been previously compensated for travel to and from other out-of-town worksites, and if so, the amount and the nature of their mutual agreement; how the claimant traveled to and from Penn Yan including the route taken, the vehicle utilized, the tolls, if any; whether the employer afforded the claimant the use of an employer credit card or employer vehicle; and/or whether the claimant submitted his travel expenses, including gasoline, tolls, taxes, meals, to the employer for reimbursement and the method, if any, of such reimbursement process.

The parties will testify further as to whether the claimant could have refused the out-of-town assignment, whether he had previously refused an out-of-town assignment, the consequences for the potential refusal of an out-of-town assignment, and whether the employer had offered any additional accommodations to facilitate the claimant's acceptance of the out-of-town assignment, including offering an employer vehicle, arranging a carpool, etc. Any documentary evidence in support of such testimony, shall be produced at hearing for potential entrance into the record.

The employer will then produce documentary evidence of the \$50.00 payments, including but not limited to the claimant's paystubs for the period from June 2021 through November 2021 potentially reflecting such payments, corporate tax returns for 2021, including any schedules listing business expenses and deductions reflecting such payments, accounting notations, and/or any ledgers reflecting the \$50.00 payments in 2021. These documents will be produced at hearing for entrance into the record after an opportunity for objection.

The Judge will then offer, for entrance into the record after an opportunity for objection, the Summary of Interviews of both the claimant and the employer as well as the Claim History/Benefit Ledger.

The Judge will then take all additional testimony and evidence necessary to complete the record.

Now, based on the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge, insofar as appealed, be and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues, insofar as appealed, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issue, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER